


17 JUN 09

Sir's:

As Jim Brown requested. Enclosed is a copy of a letter from Smith & Lowney. Please review and contact Mr. Brown with your comments and to schedule a meeting with our legal representation.

Thank you

A handwritten signature in black ink, appearing to read 'G. Thompson', with a long horizontal flourish extending to the right.

Gerald Thompson

**SMITH & LOWNEY, P.L.L.C.**

2317 EAST JOHN STREET  
SEATTLE, WASHINGTON 98112  
(206) 860-2883, FAX (206) 860-4187

June 12, 2009

**Via Certified Mail - Return Receipt Requested**

Managing Agent  
Alaskan Copper Works  
3200 6th Ave. South  
Seattle, Washington 98134

**Re: NOTICE OF INTENT TO SUE UNDER THE CLEAN WATER ACT AND  
REQUEST FOR COPY OF STORMWATER POLLUTION PREVENTION  
PLAN**

Dear Managing Agent:

We represent Puget Soundkeeper Alliance, 5309 Shilshole Ave. NW, Suite 215, Seattle, Washington, 98107, (206) 297-7002. The mission of Puget Soundkeeper Alliance is to protect and preserve Puget Sound by tracking down and stopping the discharge of toxic pollutants into its waters. Any response or correspondence related to this matter should be directed to us at the letterhead address. This letter is to provide you with sixty days notice of Puget Soundkeeper Alliance's intent to file a citizen suit against Alaskan Copper Works, and/or Alaskan Copper Companies, Inc. d/b/a Alaskan Copper Works, and/or Alaskan Copper and Brass Company d/b/a Alaskan Copper Works, and/or ALCO Investment Company d/b/a Alaskan Copper Works (collectively referred to herein as "Alaskan Copper") under Section 505 of the Clean Water Act ("CWA"), 33 USC § 1365, for the violations described below. In addition, as described below, this letter is a request for a copy of the complete and current stormwater pollution prevention plan ("SWPPP") required by Alaskan Copper's National Pollution Discharge Elimination System permit.

Alaskan Copper has violated and continues to violate the CWA (see Sections 301 and 402 of the CWA, 33 USC §§ 1311 and 1342) and its National Pollutant Discharge Elimination System Permit No. SO3-000139 ("the Permit"), issued by the Washington Department of Ecology on August 21, 2002, effective on September 20, 2002, modified on December 1, 2004, effective January 14, 2005, expiring September 20, 2007, reissued August 15, 2007, effective September 15, 2007, set to expire on May 31, 2008, reissued again on October 15, 2008, effective November 15, 2008, and set to expire on April 30, 2009, but remaining effective, with respect to operations of, and discharges of stormwater and pollutants from, its facilities located at or about 3200 6th Ave. South, Seattle, Washington 98134, including all facilities in the vicinity thereof covered by the Permit (the "facility"), as described herein.

## I. COMPLIANCE WITH STANDARDS

A. Condition S7 of the Permit requires that Alaskan Copper's discharges not cause or contribute to an excursion of Washington State water quality standards and sediment management standards. Alaskan Copper has violated Condition S7 of the Permit by discharging stormwater that causes or contributes to a violation of state water quality standards for turbidity, zinc, copper, and lead, and that causes or contributes to a violation of state sediment management standards, each and every time that there is more than a trace amount of precipitation that causes a stormwater discharge from Alaskan Copper's facility. The dates on which these violations occurred include, but are not limited to, the dates on which stormwater samples were collected with the following concentrations indicated by Alaskan Copper's Discharge Monitoring Reports and/or stormwater sampling lab reports:

<u>Monitoring Period</u>	<u>Parameter</u>	<u>Value</u>	
2 <sup>nd</sup> Quarter 2003	Turbidity	27 NTU	
2 <sup>nd</sup> Quarter 2003	Zinc	1100 µg/L	
3 <sup>rd</sup> Quarter 2003	Zinc	820 µg/L	
3 <sup>rd</sup> Quarter 2003	Copper	360 µg/L	
4 <sup>th</sup> Quarter 2003	Zinc	620 µg/L	
4 <sup>th</sup> Quarter 2003	Copper	110 µg/L	
1 <sup>st</sup> Quarter 2004	Zinc	650 µg/L	
1 <sup>st</sup> Quarter 2004	Copper	130 µg/L	
2 <sup>nd</sup> Quarter 2004	Zinc	590 µg/L	
2 <sup>nd</sup> Quarter 2004	Copper	110 µg/L	
3 <sup>rd</sup> Quarter 2004	Zinc	910 µg/L	
3 <sup>rd</sup> Quarter 2004	Copper	680 µg/L	
4 <sup>th</sup> Quarter 2004	Turbidity	77 NTU	(CB 62802)
4 <sup>th</sup> Quarter 2004	Zinc	830 µg/L	(CB 62802)
4 <sup>th</sup> Quarter 2004	Copper	700 µg/L	(CB 62802)
4 <sup>th</sup> Quarter 2004	Lead	88 µg/L	(CB 62802)
4 <sup>th</sup> Quarter 2004	Turbidity	64 NTU	(CB 295801)
4 <sup>th</sup> Quarter 2004	Zinc	830 µg/L	(CB 295801)
4 <sup>th</sup> Quarter 2004	Copper	640 µg/L	(CB 295801)
4 <sup>th</sup> Quarter 2004	Turbidity	120 NTU	(CB 320001)
4 <sup>th</sup> Quarter 2004	Zinc	480 µg/L	(CB 320001)
4 <sup>th</sup> Quarter 2004	Copper	1500 µg/L	(CB 320001)
4 <sup>th</sup> Quarter 2004	Turbidity	34 NTU	(CB 330002)
4 <sup>th</sup> Quarter 2004	Zinc	240 µg/L	(CB 330002)
4 <sup>th</sup> Quarter 2004	Copper	170 µg/L	(CB 330002)
4 <sup>th</sup> Quarter 2004	Turbidity	150 NTU	(CB 330102)
4 <sup>th</sup> Quarter 2004	Zinc	3200 µg/L	(CB 330102)
4 <sup>th</sup> Quarter 2004	Copper	140 µg/L	(CB 330102)
4 <sup>th</sup> Quarter 2004	Turbidity	120 NTU	(CB 340004)
4 <sup>th</sup> Quarter 2004	Zinc	270 µg/L	(CB 340004)

4 <sup>th</sup> Quarter 2004	Copper	110 µg/L	(CB 340004)
4 <sup>th</sup> Quarter 2004	Turbidity	150 NTU	(CB 331707)
4 <sup>th</sup> Quarter 2004	Zinc	1100 µg/L	(CB 331707)
4 <sup>th</sup> Quarter 2004	Copper	1200 µg/L	(CB 331707)
4 <sup>th</sup> Quarter 2004	Zinc	380 µg/L	(CB 470002)
4 <sup>th</sup> Quarter 2004	Copper	80 µg/L	(CB 470002)
4 <sup>th</sup> Quarter 2004	Lead	111 µg/L	(CB 470002)
4 <sup>th</sup> Quarter 2004	Turbidity	>200 NTU	(CB 741601)
4 <sup>th</sup> Quarter 2004	Zinc	590 µg/L	(CB 741601)
4 <sup>th</sup> Quarter 2004	Copper	130 µg/L	(CB 741601)
3 <sup>rd</sup> Quarter 2005	Turbidity	36 NTU	
3 <sup>rd</sup> Quarter 2005	Zinc	620 µg/L	
3 <sup>rd</sup> Quarter 2005	Copper	330 µg/L	
2 <sup>nd</sup> Quarter 2007	Turbidity	33 NTU	
2 <sup>nd</sup> Quarter 2007	Zinc	773 µg/L	
2 <sup>nd</sup> Quarter 2007	Copper	432 µg/L	
2 <sup>nd</sup> Quarter 2008	Zinc	706 µg/L	(Sample ID M119514 B)
2 <sup>nd</sup> Quarter 2008	Copper	241 µg/L	(Sample ID M119514 B)
2 <sup>nd</sup> Quarter 2008	Zinc	682 µg/L	(Sample ID M119514 C)
2 <sup>nd</sup> Quarter 2008	Copper	284 µg/L	(Sample ID M119514C)
4 <sup>th</sup> Quarter 2008	Turbidity	42.5 NTU	
4 <sup>th</sup> Quarter 2008	Zinc	845 µg/L	
4 <sup>th</sup> Quarter 2008	Copper	240 µg/L	

B. Condition S3.A of the Permit requires all discharges and activities authorized by the Permit be consistent with the terms and conditions of the Permit. Alaskan Copper has violated this condition by discharging and acting inconsistent with the conditions of the Permit as described in this Notice of Intent to Sue.

## II. STORMWATER POLLUTION PREVENTION PLAN

A. Condition S9 of the Permit requires Alaskan Copper to prepare and fully implement a SWPPP as specified. The SWPPP must include the BMPs necessary to provide all known, available and reasonable methods of prevention, control, and treatment ("AKART"). It must also include any additional BMPs as necessary to comply with state water quality standards. Alaskan Copper is in violation of this condition as it has failed to prepare and/or implement a SWPPP that includes AKART BMPs and BMPs necessary to comply with state water quality standards.

B. Condition S9 of the Permit requires Alaskan Copper to have and implement a SWPPP that "must be consistent with permit requirements, fully implemented as directed by permit conditions, and updated as necessary to maintain compliance with permit conditions." In sum, Alaskan Copper is in violation of this condition because its SWPPP is not consistent with permit requirements, has not been fully implemented and has not been updated as necessary.

The SWPPP fails to satisfy the requirements of Condition S9 of the Permit because it does not adequately describe BMPs. Condition S9.B.3 of the Permit requires that the SWPPP “include a description of the [BMPs] that are necessary for the facility to eliminate or reduce the potential to contaminate stormwater. The SWPPP must document how stormwater BMPs were selected, the pollutant removal performance expected from the BMP being selected and the technical basis that supports the performance claims for the BMPs being selected and an assessment of how the selected BMP will comply with state water quality standards, satisfy the state AKART requirements, and the federal technology-based treatment requirements under 40 CFR part 125.3.” As described by this subcondition and the second and third prefatory paragraphs of Condition S9 of the Permit, in lieu of such documentation (“the demonstration approach”), a permittee can choose to follow the stormwater management practices contained in approved stormwater technical manuals (“the presumptive approach”). Condition S9.A.5 of the Permit directs permittees selecting the presumptive approach to “clearly state which of the approved stormwater technical manuals the BMPs in their SWPPP are based on.” Alaskan Copper’s SWPPP does not adequately describe BMPs and does not provide documentation of BMP adequacy, nor citation to an approved stormwater technical manual.

Alaskan Copper’s SWPPP fails to satisfy the requirements of Condition S9.A of the Permit. The SWPPP fails to include measures to identify and eliminate the discharge of illicit discharges as required by Condition S9.A.1 of the Permit. The SWPPP fails to provide a schedule for implementation of additional or enhanced BMPs necessary because of a notice from Ecology, facility changes or self-inspection that satisfies the timeline requirements of Condition S9.A.4 of the Permit. Alaskan Copper has failed to modify the SWPPP in response to changes and deficiencies as required by Condition S9.A.4 of the Permit.

Alaskan Copper’s SWPPP fails to satisfy the requirements of Condition S9.B.1 of the Permit because it fails to include a facility assessment as mandated. The SWPPP fails to include an adequate facility description because it does not describe the industrial activities conducted at the site, the general layout of the facility including buildings and storage of raw materials, the flow of goods and materials through the facility and seasonal variations including peaks in production and changes in work based on season or weather as Condition S9.B.1.a of the Permit requires. The SWPPP fails to include an adequate site map because it has no site map that provides identifiers of significant features and that is of sufficient size and detail to identify the stormwater drainage and discharge structures, an outline of the stormwater drainage areas for each stormwater discharge point, paved areas and buildings, areas of pollutant contact, surface water locations, areas of existing and potential soil erosion and vehicle service areas as Condition S9.B.1.b of the Permit requires. The SWPPP fails to include an adequate inventory of industrial activities because it does not identify all areas associated with industrial activities which have been or may potentially be sources of significant amounts of pollutants, including the following: loading/unloading of dry bulk materials or liquids; outdoor storage of materials or products; outdoor manufacturing and processing; dust or particulate generating processes; roofs or other surfaces exposed to air emissions from a manufacturing building or a process area; on-site waste treatment, storage or

disposal; vehicle and equipment fueling, maintenance and/or cleaning; and roofs or other surfaces composed of materials that may be mobilized by stormwater, as required by Condition S9.B.1.c of the Permit. The SWPPP fails to include an adequate inventory of materials because it does not list all the types of materials handled at the site that potentially may be exposed to precipitation or runoff and that could result in stormwater pollution of a significant amount as required by Condition S9.B.1.d of the Permit. The SWPPP lacks an inventory of materials that includes a short narrative for each of these materials describing the potential for the pollutant to be present in stormwater discharge, and updating of this inventory as data has become available to verify the presence or absence of these pollutants as required by Condition S9.B.1.d of the Permit has not occurred. The SWPPP does not include a narrative description of any potential sources of pollutants of a significant amount from past activities; significant materials that were previously handled, treated, stored, or disposed of in a manner that allows ongoing exposure to stormwater as required by Condition S9.B.1.d of the Permit. The SWPPP does not include the method and location of on-site storage or disposal of such materials and a list of significant spills and significant leaks of toxic or hazardous pollutants as Condition S9.B.1.d of the Permit requires.

Alaskan Copper's SWPPP fails to satisfy the requirements of Condition S9.B.2 of the Permit because it fails to include a monitoring plan that addresses stormwater sampling requirements and visual inspections as mandated. The SWPPP has no monitoring plan that identifies all the points of discharge and a discussion of representative sampling and how Alaskan Copper has determined which points of discharge to monitor as Condition S9.B.2 of the Permit requires. This representative discussion is to include a means to estimate the volume/rate of discharge from each discharge point, differences in exposure to pollutants at each discharge point, pollutants likely to be in each discharge and a relative comparison of probable pollutant concentrations, none of which is included in the SWPPP. The SWPPP fails to identify who is responsible for monitoring and how monitoring will be conducted as Condition S9.B.2 of the Permit requires. In violation of Condition S9.B.2 of the Permit, the SWPPP lacks a monitoring plan that includes: identification of points of discharge; a check list for visual monitoring; identification of who conducts stormwater sampling; identification of where samples will be taken; parameters for analysis; procedures for sample collection and handling; procedures for sending samples to a lab; and procedures for submitting results to Ecology.

Alaskan Copper's SWPPP fails to satisfy the requirements of Condition S9.B.3.a of the Permit because it does not include operational source control BMPs. Specifically, the SWPPP lacks the following categories of BMPs as Condition S9.B.3.a of the Permit requires: pollution prevention team (including identification of specific individuals by name or title who are responsible for developing, implementing, maintaining, and modifying the SWPPP, and for all aspects of the SWPPP); good housekeeping (including definition of ongoing maintenance and cleanup of areas that may contribute pollutants to stormwater discharges, and a schedule/frequency for each housekeeping task); preventive maintenance (including BMPs to inspect and maintain stormwater control-related equipment and systems, and the schedule/frequency for each task); spill prevention and emergency cleanup plan (including BMPs to identify areas where potential spills could contaminate stormwater and specifications

of material handling procedures, storage requirements, and cleanup equipment and procedures); employee training (including operation of the SWPPP, spill response procedures, good housekeeping, and material management practices, the content of the training, how training will be conducted, the frequency/schedule to ensure that employees receive training, and a log of the dates on which specific employees received training); inspections and recordkeeping (including documentation of procedures to assure compliance with permit requirements for inspections and recordkeeping, including identification of personnel who conduct inspections, provision of a tracking or follow-up procedure to ensure that a report is prepared and appropriate action taken in response to visual monitoring, definition of how Alaskan Copper will comply with signature and record retention requirements, and certification of compliance with the SWPPP).

Alaskan Copper's SWPPP fails to comply with Condition S9.B.3.b of the Permit because it does not identify structural source control BMPs necessary for stormwater management.

Alaskan Copper's SWPPP fails to comply with Condition S9.B.3.c of the Permit because it does not include appropriate treatment BMPs, and because it includes no narrative that describes how Alaskan Copper determined that treatment BMPs are or are not required.

Alaskan Copper's SWPPP fails to comply with Condition S9.B.3.d of the Permit because it does not include stormwater peak runoff rate and volume control BMPs and a narrative that describes how Alaskan Copper determined whether flow control BMPs are or are not required.

Alaskan Copper's SWPPP fails to comply with Condition S9.B.4 of the Permit because it does not include a narrative that describes whether there is a reasonable potential for soil erosion of a significant amount at the site and BMPs to prevent or minimize the potential for soil erosion.

### **III. MONITORING, REPORTING AND BENCHMARK-RELATED REQUIREMENTS**

A. Condition S4.A of the Permit requires Alaskan Copper to collect a sample of its stormwater discharge once during every calendar quarter. Condition S4.A sets forth sample collection criteria, but requires the collection of a sample even if the criteria cannot be met. Alaskan Copper violated this condition by failing to collect the required sample for the first, second and fourth quarters of 2005, the first, second, third and fourth quarters of 2006, the first, third and fourth quarters of 2007, and the first and third quarters of 2008.

B. Condition S4.D.2 of the Permit requires Alaskan Copper to analyze samples collected quarterly for turbidity, pH, total zinc, and oil and grease beginning with the second quarter of 2003. Condition S4.E.4 of the Permit requires Alaskan Copper to analyze samples collected quarterly for copper, lead and hardness beginning with the second quarter of 2003. As described in the October 7, 2004, letter from the Washington Department of Ecology to

Alaskan Copper, Condition S4.G of the Permit requires Alaskan Copper to analyze samples collected quarterly for total suspended solids beginning January, 2005.

Alaskan Copper has violated these requirements by failing to analyze stormwater samples for any of the required parameters for the first, second and fourth quarters of 2005, the first, second, third and fourth quarters of 2006, the first, third and fourth quarters of 2007, and the first and third quarters of 2008. Alaskan Copper violated these requirements by failing to analyze a stormwater sample for copper, lead and hardness for the second quarter of 2003. Alaskan Copper further violated these requirements by failing to analyze stormwater samples for total suspended solids for the third quarter of 2005, the second quarter of 2007, and the second and fourth quarters of 2008.

C. Condition S5.A of the Permit requires Alaskan Copper to use Discharge Monitoring Report ("DMR") forms provided or approved by the Department of Ecology to summarize, report and submit monitoring data to the Department of Ecology. For each monitoring period (calendar quarter) a DMR must be completed and submitted to the Department of Ecology not later than 45 days after the end of the monitoring period. Alaskan Copper has violated this condition by failing to submit a DMR, or by failing to submit the DMR within the time prescribed, for the fourth quarter of 2007, and the first, second and third quarters of 2008. Alaskan Copper violated this condition by failing to summarize and report its stormwater monitoring data on the DMRs it submitted to the Department of Ecology for the second quarter of 2008. Alaskan Copper violated this condition by inaccurately reporting its stormwater monitoring data for zinc on the DMR it submitted to the Department of Ecology for the second quarter of 2003, and by inaccurately reporting its stormwater monitoring data for copper on the DMRs it submitted to the Department of Ecology for the first, second and third quarters of 2004.

D. Condition S4.C of the Permit requires Alaskan Copper to take specified actions, called a "Level One Response," "each time after December 31, 2004 quarterly sample results are above a benchmark value or outside the benchmark range for pH." A Level One Response comprises: a facility inspection as promptly as possible but no later than two weeks after receipt of sampling results, with the inspection evaluating possible sources of the benchmark parameter in the discharge, identifying source/operational control methods by which stormwater contamination can be further reduced, and evaluating whether any improvements or changes to the stormwater pollution prevention plan are warranted to control the benchmark parameter; summarization of the inspection results, including remedial actions taken, if any, in the stormwater pollution prevention plan; evaluating the need for a level two or three response as the Permit describes; and including a brief summary of inspection results and remedial actions with the quarterly DMR for the quarter for which the sample results were above (or outside) benchmark values. Condition S5.A also requires summaries of Level One Responses to be included with quarterly DMRs.

Condition S4.D.2 establishes the following benchmarks: turbidity 25 Nephelometric Turbidity Units ("NTU"); pH 6 – 9 standard units ("SU"); zinc 117 µg/L; and oil and grease



15 mg/L. Condition S4.E.4 establishes the following benchmarks: copper 63.6 µg/L; and lead 81.6 µg/L.

Alaskan Copper has violated the requirements of Condition S4.C and S5.A by failing to conduct a Level One Response that meets the requirements described above, including the required inspection, summarization, and reporting, each time after December 31, 2004, its quarterly sampling results were greater than a benchmark or outside the benchmark range for pH, including but not limited to each of the following benchmark exceedances:

<u>Monitoring Period</u>	<u>Parameter</u>	<u>Value</u>	
3 <sup>rd</sup> Quarter 2005	Turbidity	36 NTU	
3 <sup>rd</sup> Quarter 2005	Zinc	620 µg/L	
3 <sup>rd</sup> Quarter 2005	Copper	330 µg/L	
2 <sup>nd</sup> Quarter 2007	Turbidity	33 NTU	
2 <sup>nd</sup> Quarter 2007	Zinc	773 µg/L	
2 <sup>nd</sup> Quarter 2007	Copper	432 µg/L	
2 <sup>nd</sup> Quarter 2008	Zinc	706 µg/L	(Sample ID M119514 B)
2 <sup>nd</sup> Quarter 2008	Copper	241 µg/L	(Sample ID M119514 B)
2 <sup>nd</sup> Quarter 2008	Zinc	682 µg/L	(Sample ID M119514 C)
2 <sup>nd</sup> Quarter 2008	Copper	284 µg/L	(Sample ID M119514 C)
4 <sup>th</sup> Quarter 2008	Turbidity	42.5 NTU	
4 <sup>th</sup> Quarter 2008	Zinc	845 µg/L	
4 <sup>th</sup> Quarter 2008	Oil & Grease	30 mg/L	
4 <sup>th</sup> Quarter 2008	Copper	240 µg/L	

E. Condition S4.C of the Permit requires Alaskan Copper to perform a Level Two response, to be initiated immediately whenever two out of the previous four quarterly sampling results collected after December 31, 2004, are above the identified action levels or outside of the action range for pH. Condition S4.C establishes the following action levels: turbidity 50 NTU; pH 5-10 SU; zinc 372 µg/L; oil and grease 30 mg/L; copper 149 µg/L; and lead 159 µg/L. Discharges from the facility exceeded the action levels during the flowing sampling periods after December 31, 2004:

<u>Monitoring Period</u>	<u>Parameter</u>	<u>Value</u>	
3 <sup>rd</sup> Quarter 2005	Zinc	620 µg/L	
3 <sup>rd</sup> Quarter 2005	Copper	330 µg/L	
2 <sup>nd</sup> Quarter 2007	Zinc	773 µg/L	
2 <sup>nd</sup> Quarter 2007	Copper	432 µg/L	
2 <sup>nd</sup> Quarter 2008	Zinc	706 µg/L	(Sample ID M119514 B)
2 <sup>nd</sup> Quarter 2008	Copper	241 µg/L	(Sample ID M119514 B)
2 <sup>nd</sup> Quarter 2008	Zinc	682 µg/L	(Sample ID M119514 C)
2 <sup>nd</sup> Quarter 2008	Copper	284 µg/L	(Sample ID M119514 C)
4 <sup>th</sup> Quarter 2008	Zinc	845 µg/L	
4 <sup>th</sup> Quarter 2008	Copper	240 µg/L	

As required by Condition S4.C of the Permit, a Level Two response comprises: prompt identification of the potential sources of stormwater contamination that are contributing to the presence of the benchmark parameter; investigation of all available options of source control, operational control and stormwater treatment BMPs to reduce stormwater contaminant levels to below benchmark values; implementation of additional source and operational BMPs identified as part of this investigation; preparation of a Level Two source control report outlining actions taken, planned and any schedule for implementation of source and operational BMPs to reduce stormwater contaminant levels; and submission of the Level Two source control report to the Department of Ecology within six months of initiating a Level Two response.

Alaskan Copper is in violation of Condition S4.C by failing to immediately initiate Level Two responses whenever two out of the previous four quarterly sampling results collected after December 31, 2004 were above the identified action levels for a parameter, and for failing to perform Level Two responses for these parameters in accordance with the Permit requirements describe above, including failure to promptly identify potential sources of contamination, failure to investigate all available options for BMPs, failure to implement source and operational BMPs identified in such investigations, and failure to prepare and submit to Ecology Level Two source control reports for these parameters. As indicated in the table above, these violations include, but are not limited to, Alaskan Copper's failure to fulfill these obligations for zinc and copper upon receipt of its sampling results for the second quarter of 2007.

F. Condition S4.C of the Permit requires Alaskan Copper to perform a "Level Three Response," which shall be immediately initiated "if any four quarterly samples collected after December 31, 2004 are above the action levels." The Permit establishes the action levels describe in paragraph III.E above. A Level Three Response comprises: prompt identification of the potential sources of stormwater contamination that are causing or contributing to the presence of the benchmark parameter; investigation of all available options of source control, operational control and stormwater treatment BMPs to reduce stormwater contaminant levels to or below permit benchmark values; implementation of additional source control, operational control and stormwater treatment BMPs identified as part of this investigation within twelve months of initiating the level three response; preparation of a level three source control report outlining actions taken, planned and scheduled to reduce stormwater contaminant levels including stormwater treatment BMPs; and submission of the level three source control report to Ecology within twelve months of initiation of the level three response.

Alaskan Copper is in violation of Condition S4.C by failing to immediately initiate Level Three responses whenever four of its quarterly sampling results collected after December 31, 2004 were above the identified action levels for a parameter, and for failing to perform Level Three responses for these parameters in accordance with the Permit requirements describe above, including failure to promptly identify potential sources of contamination, failure to investigate all available options for BMPs, failure to implement source control, operational control, and treatment BMPs identified in such investigations, and

failure to prepare and submit to Ecology Level Three source control reports for these parameters. As indicated in the table in paragraph III.E above, these violations include, but are not limited to, Alaskan Copper's failure to fulfill these obligations for zinc and copper upon receipt of its sampling results for the fourth quarter of 2008.

G. Condition S4.D.1 of the Permit requires Alaskan Copper to perform quarterly visual monitoring during stormwater sampling. This visual monitoring must include observations made at sampling locations at the time of sampling; an inspection of stormwater discharges for the presence of floating materials, visible sheen, discoloration, turbidity, and odor; and an assessment of the best management practices required by the permit and the SWPPP. Discharge locations that are not sampled must be visually inspected at least annually during a storm event. The visual monitoring and inspections must be conducted by the personnel specified by the SWPPP, who must verify that the description of potential pollutant sources is accurate, that the site map required in the SWPPP has been updated or modified to reflect current conditions, and that the controls to reduce pollutants in stormwater discharges are implemented and adequate.

In addition to quarterly visual inspection during storm events, Alaskan Copper must conduct at least one dry season (July, August, September) inspection each year and that inspection must be performed by the personnel specified in the SWPPP and must occur after at least seven consecutive days of no precipitation. The dry season inspection must determine the presence of non-stormwater discharges, which must be eliminated within thirty days unless authorized by the Permit. Alaskan Copper must also notify the Department of Ecology if non-stormwater discharges are discovered.

The results of each inspection/visual monitoring event must be summarized in an inspection report or checklist and entered into or attached to the SWPPP, and must be signed by the person making the observations. Visual monitoring reports must also be reviewed and signed by a duly authorized representative of Alaskan Copper. Monitoring reports must include a certification of whether, in the judgment of the person signing the report, Alaskan Copper is in compliance or non-compliance with the SWPPP and the Permit, and identify any incidents of non-compliance. If the site inspection indicates that the requirements of the SWPPP or the Permit are not being met, the visual inspection report must include a summary of the actions that will be taken to meet these requirements.

Alaskan Copper is in violation of these requirements of Condition S4.D.1 of the Permit because it has failed to conduct the requisite quarterly and other visual monitoring, failed to conduct an annual dry season inspection, failed to prepare the requisite inspection reports or checklists and enter them into or attach them to the SWPPP, and failed to make the requisite certifications and summaries for any period since required to do so under the Permit.

H. Condition G17 of the Permit requires that all applications, reports, or information submitted by Alaskan Copper to the Department of Ecology be signed and certified by a person of specified authority (in the case of a corporation, by a principal executive officer of at least the level of vice president) or by a person who is duly authorized by such person as

specified. Alaskan Copper is in violation of this condition because all of the DMRs that it has submitted beginning with the second quarter of 2003 are not signed and certified by such person.

#### IV. RECORDKEEPING REQUIREMENTS

A. Condition S5.C of the Permit requires Alaskan Copper to record specified information for each sample taken, including the date, exact place, method, and time of sampling or measurement; the individual who performed the sampling or measurement; the dates the analyses were performed; the individual who performed the analyses; the analytical techniques or methods used, and the results of all analyses. Alaskan Copper is in violation of this condition as it has not recorded each of these specified items for samples taken since required to under the Permit.

B. Condition S5.B of the Permit requires Alaskan Copper to retain records of all monitoring information, inspection reports, and any other documentation of compliance with permit requirements for a minimum of five years. Alaskan Copper is in violation of this condition because it has failed to retain records of such information, reports, and other documentation.

C. Condition S5.E of the Permit requires Alaskan Copper to take specified actions if Alaskan Copper fails for any reason to comply with any condition specified by the Permit. The specified actions include: immediate action to minimize potential contamination or otherwise stop the noncompliance and correct the problem; immediate notification to the Department of Ecology of the failure to comply; and submission to the Department of Ecology of a detailed written report within thirty days. The detailed written report must describe the noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue, and the steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. Alaskan Copper has violated this condition by failing to take the required actions, including submission of a detailed written report, for any of the violations described in this Notice of Intent to Sue.

#### V. PUBLIC ACCESS TO STORMWATER POLLUTION PREVENTION PLAN

Pursuant to Condition S5.F of the Permit, Puget Soundkeeper Alliance hereby requests that Alaskan Copper provide a copy of its Stormwater Pollution Prevention Plan, complete with the inspection/visual monitoring reports or checklists (S4.D., S9.B.3.a.vi), monitoring plan (S9.B.2), employee training logs (S9.B.3.a.v), other plans incorporated by reference (S9.A.6) and all other components as specified by Condition S9 of the Permit. Puget Soundkeeper Alliance requests that Alaskan Copper provide such copy within fourteen days of its receipt of this request, which constitutes a reasonable time under Condition S5.F of the Permit. *See* Permit, Condition S9.A.2 (requiring submission of the SWPPP to the Department of Ecology within two weeks of request receipt). The copy of the SWPPP and any other

communications about this request should be directed to the undersigned at the letterhead address.

Should Alaskan Copper fail to provide the requested complete copy of its SWPPP within a reasonable time as required by Condition S5.F of the Permit, it will be in violation of that condition, which violation shall also be subject to this Notice of Intent to Sue and any ensuing lawsuit.

The above-described violations reflect those indicated by the information currently available to Puget Soundkeeper Alliance. These violations are ongoing. Puget Soundkeeper Alliance intends to sue for all violations, including those yet to be uncovered and those committed after the date of this Notice of Intent to Sue.

Under Section 309(d) of the CWA, 33 USC § 1319(d), each of the above-described violations subjects the violator to a penalty of up to \$32,500 per day for violation days on or before January 12, 2009, and up to \$37,500 per day for violation days after January 12, 2009. In addition to civil penalties, Puget Soundkeeper Alliance will seek injunctive relief to prevent further violations under Sections 505(a) and (d) of the CWA, 33 USC § 1365(a) and (d), and such other relief as is permitted by law. Also, Section 505(d) of the CWA, 33 USC § 1365(d), permits prevailing parties to recover costs, including attorney's fees.

Puget Soundkeeper Alliance believes that this NOTICE OF INTENT TO SUE sufficiently states grounds for filing suit. We intend, at the close of the 60-day notice period, or shortly thereafter, to file a citizen suit against Alaskan Copper Works, and/or Alaskan Copper Companies, Inc. d/b/a Alaskan Copper Works, and/or Alaskan Copper and Brass Company d/b/a Alaskan Copper Works, and/or ALCO Investment Company d/b/a Alaskan Copper Works, under Section 505(a) of the Clean Water Act for violations.

During the 60-day notice period, we would be willing to discuss effective remedies for the violations addressed in this letter and settlement terms. If you wish to pursue such discussions in the absence of litigation, we suggest that you initiate those discussions within 10 days of receiving this notice so that a meeting can be arranged and so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint if discussions are continuing when the notice period ends.

Very truly yours,

SMITH & LOWNEY, PLLC

By: 

Brian A. Knutsen

Bridget Baker-White

c: Lisa P. Jackson, Administrator, U.S. EPA  
Michelle Pirzadeh, Acting Administrator, Region 10 U.S. EPA  
Jay Manning, Director, Washington Department of Ecology  
Brian M. Lucarelli, Registered Agent for Alaskan Copper Companies, Inc. and ALCO  
Investment Company (3223 6th Ave. South, Seattle, WA 98134)

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